



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 19 2012

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Ms. Tracy Heinzman  
Wiley, Rein & Fielding, L.L.P.  
1776 K Street, N.W.  
Washington, D.C. 20006

Re: No Action Assurance Regarding the Production of Methyl Bromide for 2013 Critical Uses

Dear Ms. Heinzman:

I am writing in response to your November 16, 2012, letter to the United States Environmental Protection Agency on behalf of the Methyl Bromide Industry Panel representing producers and importers, in which you request that the EPA not enforce restrictions on methyl bromide production and import found at 40 CFR § 82.4 until such time as the EPA's Office of Air and Radiation issues a final rule that authorizes the production and import of methyl bromide for critical uses in 2013. In your letter, you explain that methyl bromide production and import is essential to ensure pest control in some vital agricultural sectors, including controlling infestations in domestic plantings and food supply operations.

EPA recently signed for publication a notice of proposed rulemaking authorizing critical use of methyl bromide for 2013. EPA intends to finalize the rule as quickly as feasible, after considering public comment. I understand that without the production or importation of critical use methyl bromide in early 2013, critical users will have difficulty meeting their needs for early spring applications. The EPA recognizes, however, that the current regulations only authorize the production, importation or use of critical use methyl bromide through December 31, 2012. Thus, there is no current regulatory authorization to produce, import or use methyl bromide for critical uses in 2013.

For the reasons outlined in your letter, the EPA will exercise its enforcement discretion not to pursue enforcement for violations of 40 CFR § 82.4 against companies identified in the proposed 2013 critical use exemption rule as holders of critical use allowances for 2013, to produce, import or sell critical use methyl bromide for the proposed critical uses for 2013, in amounts not to exceed 340,831 kg. EPA will also exercise its enforcement discretion not to pursue enforcement for violations of 40 CFR § 82.4 against persons identified in the proposed rule as approved critical users who purchase or use critical use methyl bromide produced or imported by such companies for locations and uses identified as approved critical uses in the proposed 2013 critical use exemption rule. This exercise of discretion will begin on January 1, 2013, and is subject to the following conditions:

- Companies must continue to report 2012 and 2013 production and importation of methyl bromide to the EPA as required under the critical use regulations at 40 CFR § 82.13;
- Any critical use methyl bromide produced or imported in 2013 prior to the effective date of the final rule shall still count towards the company's 2013 allocation and, once the rule is effective,

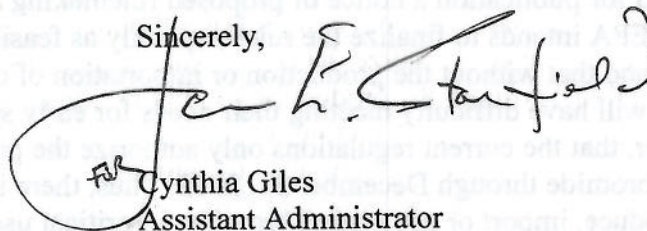
require the expenditure of 2013 vintage critical use allowances for all methyl bromide used during calendar year 2013;

- The allowance allocations are based on each company's proportionate share of allowances in the proposed rule, as follows:
  - Chemtura: Preplant 196,114 kg; Post Harvest: 11,008 kg
  - Albemarle: Preplant 80,647 kg; Post Harvest: 4,527 kg
  - ICL-IP: Preplant 44,567 kg; Post Harvest: 2,502 kg
  - TriCal: Preplant 1,388 kg; Post Harvest: 78 kg
- Companies and critical users identified in the proposed rule must comply with all requirements of 40 CFR § 82.4 and the proposed rule;
- This exercise of discretion terminates upon the effective date of the final rule for 2013 or 11:59 E.D.T., July 31, 2013, whichever occurs earlier; and
- The EPA reserves the right to revoke or modify this no action assurance.

The issuance of a no action assurance for this short period of time is in the public interest as it will prevent disruptions in critical pest control activities. I believe that this action will not increase environmental harm, as no additional allowances are or will be allocated based on this action.

If you have any further questions regarding this matter, please contact Charles Garlow, (202) 564-1088.

Sincerely,



Cynthia Giles  
Assistant Administrator

cc: Gina McCarthy  
Assistant Administrator, Office of Air and Radiation